



Minneapolis
City of Lakes

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TO: Council Member Scott Benson
Chair, Intergovernmental Relations Committee

FROM: Jay M. Heffern, City Attorney

DATE: August 19, 2003

RE: Legislative Proposals - 2004 Session

INTEROFFICE MEMORANDUM

This is in response to your request for suggestions for the City's 2004 legislative program. The City Attorney's Office recommends the following:

1. Prosecution Case Management System. For a number of years the City Attorney's Office has sought funding for a fully functional Prosecution Case Management System. Last session the City introduced a bill to fund the system through a surcharge on certain criminal offenses. The Minnesota Legislature did not enact this proposal. The Mayor has proposed in his 2004 budget recommendations \$2.8 million to design and implement the PCMS system. Even if the Mayor's proposal is adopted by the City Council, there will be ongoing operation and maintenance costs for such a system. Accordingly, the City Attorney's Office recommends that the City propose legislation that would impose a surcharge in the Fourth Judicial District on criminal prosecutions to pay for the operation and maintenance costs of this system. Although the exact amount of these costs is unknown at this time, the City's BIS Department anticipates completing its design work by this fall. This should allow sufficient time to refine this proposal.
2. CriMNet Funding. For several years the State has been designing a system which would allow criminal justice agencies to share criminal justice information across jurisdictions statewide.

The City Attorney's Office recommends that the City support ongoing funding for the development of the statewide CriMNet system.

3. Changes to the Criminal Code.
 - a. Chronic Offenders. The City Attorney's Office experience in prosecuting chronic offenders suggests that amendments to the criminal code would help in holding chronic offenders accountable for their crimes.

The City Attorney's Office recommends that the legislation be proposed to:

- Amend the criminal code to allow for enhancement of indecent exposure cases to a felony based on two or more prior indecent exposure convictions.
- Amend the criminal code to allow for enhancement of interference with privacy cases to a felony based on two or more prior convictions.

b. Domestic-Related Assault Offenses.

- (1) Currently under Minnesota law, convictions for the following offenses can be used to enhance a Fifth Degree Assault or Domestic Assault from a misdemeanor to a gross misdemeanor or felony: Violation of an order for protection, assault in any degree, criminal sexual conduct in any degree, malicious prosecution of a child, terroristic threats, violation of a harassment restraining order, and harassment/stalking. Incongruously, offenses such as, murder in the first degree, murder in the second degree, murder in the third degree, manslaughter in the first degree or, manslaughter in the second degree cannot be used for enhancement purposes. A recent example illustrates the problem. A misdemeanor domestic assault case was handled by the City Attorney's Office where the defendant had recently been released from prison for murdering a household member. Witnesses observed the defendant strangling his girlfriend. The defendant admitted to officers that he had just been released from prison and was on parole for murdering his ex-finance. He had strangled her. Because he was convicted of murder, the City Attorney's Office could only charge him with a misdemeanor.

The City Attorney's Office recommends that legislation be proposed to amend Minn. Stat. § 609.02, subd. 16 to add the following offenses to the list of qualified domestic violence related offenses: murder in the first degree, murder in the second degree, murder in the third degree, manslaughter in the first degree, and manslaughter in the second degree.

- (2) Currently under Minnesota law, misdemeanor domestic assault can be enhanced to a gross misdemeanor if the misdemeanor has a prior qualified domestic violence related offense conviction against a family or household member and the prior conviction is within a specified time of a new offense. In order for the misdemeanor to be enhanced to a felony, the defendant must have two such convictions and the two priors and the new case must all involve the same victim. Many defendants have had two qualified prior convictions involving family or household members but the victims are not the same. The fact that the defendant has chosen different

victims, but all are family or household members, does not make the defendant's assaults any less serious.

The City Attorney's Office recommends that legislation be proposed to delete the requirement that the victim be the same person as in the prior convictions to enhance an offense to a felony.

c. Prostitution-Related Offenses.

- (1) Currently the City Attorney's Office may only enhance a misdemeanor prostitution charge under Minn. Stat. § 609.324, subd. 3 to a gross misdemeanor if there is a prior conviction under subdivision 3 within 2 years. Often, this is not a long enough period for enhancement because many prostitutes may have served time in prison for other offenses, such as drug or property-related offenses, or spent time in other states in between prostitution offenses. Increasing the enhancement period will allow for more gross misdemeanor charges for prostitution cases where the offender may be deserving of more serious sentence than can be obtained with a misdemeanor.

The City Attorney's Office recommends that legislation be proposed increasing the "look back" period for enhancement to gross misdemeanor prostitution from two years to five years.

- (2) Many prostitutes have long records in other states before beginning or resuming their prostitution activity in Minnesota. Allowing for the use of an out-of-state prostitution convictions for enhancement, as is currently allowed under Minnesota law for DWIs, will increase the number of gross misdemeanor prostitution charges and will allow for more appropriate disposition for repeat prostitution offenders.

The City Attorney's Office recommends that legislation be proposed to allow the use of out-of-state convictions to enhance prostitution offenses to gross misdemeanors.

- (3) Currently prostitution offenses can only be enhanced if the prior conviction is made under Minn. Stat. § 609.324, subd. 3. Public prostitution convictions, e.g., involving hotels, motels and other public places, are under Minn. Stat. § 609.324, subd. 2. Therefore, if a person is convicted of a public place prostitution charge under subd. 2 and is charged within two years in a non-public place case he or she may only be charged with misdemeanor. If that person had a conviction under subdivision 3, then a new charge within two years could be enhanced to a gross misdemeanor.

The City Attorney's Office recommends that legislation be proposed to allow for enhancement if the prior conviction is a gross misdemeanor "public place" conviction.

- d. Controlled Substance Offenses. There is considerable debate within the criminal justice system as to whether the possession of a small amount of marijuana should be considered a crime. In fact, many states have decriminalized the possession of small amounts of marijuana. However, the City Attorney's Office prosecutors frequently hear Minneapolis Police Department officers express concern that those individuals who are selling marijuana know the threshold for misdemeanor penalties related to marijuana possession and are careful to ensure that they possess no more than the amount that would incur a petty misdemeanor penalty. Currently possession of any amount of marijuana under 42.5 grams (except over 1.5 grams or more in a motor vehicle) is a petty misdemeanor. Therefore, a person who is in possession of marijuana that is packaged for sale may only be charged with a petty misdemeanor if the amount is under 42.5 grams. In comparison, it is a felony to possess any amount of cocaine within intent to sell. Street level drug dealers are likely to be aware of this and have an incentive to deal marijuana knowing that it is only a petty misdemeanor. A change in the law would allow for more aggressive prosecution of street drug dealers.

The City Attorney's Office recommends that the City consider whether possession of any amount of marijuana with the intent to sell should be a misdemeanor.

- e. DWI and Traffic-Related Offenses.

- (1) Over half the states and all of Minnesota's border states make it a crime to drive while under the influence of any drug that makes a person an unsafe driver. Currently, Minnesota limits its DWI drug laws to controlled substances. There are numerous drugs that are not controlled substances that may impair a person's ability to drive safely, especially when combined with other drugs, such as alcohol, or when taken in non-therapeutic doses.

The City Attorney's Office recommends that legislation be proposed that makes it a crime to drive while under the influence of any drug that makes a person an unsafe driver.

- (2) Currently Minnesota's DWI controlled substance law is limited to the presence of certain controlled substances in the body. Most other states with similar laws include controlled substances, their metabolites and their derivatives. Most controlled substances show as the actual drug in the blood or urine, except for cocaine. Cocaine rapidly dissipates from the body and often a driver will only test positive for benzoylecgonine, which

is a metabolite of cocaine, instead of cocaine itself. Cocaine is the most common drug relevant to prosecutions under the DWI per se controlled substance law. Including metabolites and/or derivatives of controlled substance will allow for easier prosecutions of more drivers impaired by crack and cocaine.

The City Attorney's Office recommends that legislation be proposed to include metabolites and derivatives in Minnesota's "per se" controlled substance law.

4. Predatory Lending. "Predatory lending" is the practice of marketing high cost real estate loans to individuals who would not otherwise qualify for conventional or traditional mortgages. These loans disproportionately impact the communities of color, elderly homeowners, and low income neighborhoods.

The City Attorney's Office proposes that the City:

- Support legislation that would prohibit predatory lending practices in Minnesota;
- Support legislation that would authorize private attorneys to bring suit in state district court on behalf of borrowers who have been victimized by predatory lenders; authorize the imposition of civil penalties and the recovery of attorney fees; and
- Support full funding of the Consumer Education Account so that the Commerce Commissioner may help consumers avoid being victimized by unscrupulous lenders; authorize the Minnesota Attorney General to enforce the state's "Minnesota Residential Mortgage Originator and Servicer Licensing Act"; appropriate sufficient funding to the Minnesota Attorney General's Office for such enforcement.

5. Local Government Authority. As municipalities in Minnesota, especially in the seven county metropolitan area, look to administrative processes for addressing violations of municipal ordinances or certain traffic offenses, there is growing legislative interest in limiting municipal authority to establish such administrative processes.

The City Attorney's Office recommends that the City oppose any legislative restrictions on local government authority.

I would be happy to provide you with any additional information about any of these recommendations.

JMH:hbp

cc: Andrea Hart Kajer, Director, Intergovernmental Relations Department
Karen Lowery Wagner, Intergovernmental Relations Department